

other proofs in my (1st defendant's) possession." A defence of justification succeeds.

In his statement at the meeting in the Chinese Assembly Hall on the 11th September, 1963, the 1st defendant elaborated on this stating that an inquiry would show:—

"(a) That the Minister, Enche Rahman Talib, is guilty of misconduct to the extent that such misconduct renders him, in my opinion, unfit to be a Minister of the Government,

(b) That he has been guilty of nepotism, and

(c) That by reason of such misconduct he is unfit to hold public office as he has, in my opinion, shaken public confidence in the fair and impartial administration of public affairs."

"Corrupt practices" is defined in the *Oxford Dictionary* as "the perversion of integrity by bribery or favour".

The evidence and the words contained in Appendix "A" to the statement of claim show that it would have been more strictly accurate to say that the "various sums of money and other favours" came from the 2nd defendant. In my opinion however the position is not affected by this because, although in law the 2nd defendant and the old company were separate entities, the 2nd defendant was the chief and substantially the only executive officer of the old company and in fact was for all practical purposes the old company.

The most important of the "documentary and other proofs" in the 1st defendant's possession was of course the 2nd defendant's statement which is contained in Appendix "A" to the statement of claim and, as I have already said, it is admitted by both the plaintiff and the 1st and 2nd defendants that in order to justify the onus on the 1st and 2nd defendants is to establish substantially the truth of the words contained therein.

In my opinion the defendants have succeeded in justifying by proving the truth of substantially the whole of the words of the statement attached to the statement of claim as Appendix "A", with the exception of paragraph 18 relating to the payment of cash to the plaintiff.

There were two distinct charges against the plaintiff, one being the receipt of the two sums of money and the other being the receipt of favours. As I have already found he did receive favours but I am unable to find that he did receive sums of money. In my opinion although the defendants have failed to prove the truth of the charge that the plaintiff received the two sums of money the words making that allegation do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

In my opinion, therefore, the defendants'

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *Shearn, Delamore & Co.; S. Seenivasagam & Sons.*

BERTAM CONSOLIDATED RUBBER CO. LTD. v. DEPUTY COLLECTOR OF LAND REVENUE, BUTTERWORTH

[A.C.J. (Hepworth J., I. W. Hake and Tay Hooi-Soo, Assessors) August 22, 1964]

[Penang — Land Acquisition Reference No. 1 of 1964]

Land acquisition — Market value — Conflicting expert opinions — Weight of such evidence — Potential development value of land — Land Acquisition Act, 1960, ss. 37(1), 38 and 51.

This was an objection against the award of the deputy collector of land revenue in respect of the compulsory acquisition by the Government of the State of Penang of approximately 5 acres of land owned by the company. The deputy collector awarded \$10,000 for the land acquired i.e. \$2,000 per acre. The company claimed a sum in excess of \$100,000 as the value of the land. Their two expert witnesses valued the land at \$76,000 and \$131,000 respectively.

Held: on the facts the approach of the government valuers was more realistic and substantially correct. However since the deputy collector had made no allowance whatsoever for any potential building value, the figure of \$2,000 per acre lay unduly low on the range of possible values. In the light of all the evidence given and a careful inspection of the land and the surrounding locality a fair figure would be \$3,500 per acre or \$17,500 for the whole 5 acres.

Per Hepworth J. "Valuation can never be a strictly mathematical process and, in particular, remote potential development value is often not easy to quantify in the absence of an abundance of evidence culled from recent transactions in respect of comparable property. Rarely is the available evidence overwhelmingly convincing and ultimately it becomes a matter of opinion based upon experience.

Almost invariably there emerges from a consideration of all the facts a fairly well-defined range although sometimes somewhat blurred at either end within which the answer clearly must lie and the opinions of those of equal competence and experience may well tend to indicate different points within that range."

LAND ACQUISITION REFERENCE.

Eusoffe Abdoolcader for the owners.

Wan Sulaiman bin Pawan Teh (Senior Federal Counsel) for the Deputy Collector of Land Revenue.

Cur. Adv. Vult.

Hepworth J.: This was an objection against the award of the deputy collector of land revenue, Butterworth, referred to this court under section 38 of the Land Acquisition Act, 1960, in respect of the compulsory acquisition by the Government of the State of Penang of approximately 5 acres of land owned by the Bertam Consolidated

Rubber Company Limited being land (hereinafter referred to as "the land acquired") comprising part of Lot 762, Mukim 6, Province Wellesley North, in the State of Penang.

The land acquired is situated about half a mile from Kepala Batas Village, being a small portion approximately 5 acres in area of a large lot, Lot 762, which has an area of 2,463 acres. The land is next to the bungalow of the manager of Bertam Estate and fronts on to the Bertam Estate road known as Jalan Bertam.

A declaration in accordance with the provisions of section 8 of the Act was published in the Government of Penang Gazette on the 14th March, 1963. It is, therefore, required to determine the proper "market value" as at the 14th March, 1963.

The deputy collector of land revenue, Butterworth, held an inquiry on the 18th April, 1963, at which Mr. R. O. Carter, the manager of Bertam Estate, appeared for the owners.

At the inquiry on the 18th April, 1963, Mr. Carter asked for an adjournment to enable him to obtain a valuation of the land, and the hearing was adjourned *sine die*. Although it is not clear from the record I do not think that there is any real doubt that the purpose of the adjournment was to enable Mr. Carter to obtain this valuation. Subsequently a valuation dated the 29th April, 1963, and made by Mr. G. M. Davidson was handed to the deputy collector by Mr. Carter. This valuation seems to have been accepted by the deputy collector without any proper admission in evidence at the inquiry because, although it appears in the land reference record, no mention is made of it in the inquiry proceedings. The deputy collector did not hold any further hearing and on the 5th September, 1963, made a formal award of \$2,000 per acre, that is to say \$10,000 for the land acquired.

There was some doubt as to whether the owners had in fact made a claim for the purpose of section 37 of the Act. It was agreed, however, by the learned Senior Federal Counsel on behalf of the Government that the valuation made by Mr. Davidson would be accepted as the owners' claim if the owners were prepared to agree that the amount claimed for the purposes of sections 37(1) and 51 of the Act was the amount contained in that valuation, that is to say a claim in excess of \$100,000. This was agreed by Mr. Abdoolcader on behalf of the owners. The position was, therefore, that the owners at the inquiry were claiming a sum in excess of \$100,000 as the value of the land as against an ultimate award by the deputy collector of \$2,000 per acre, or \$10,000 for the 5 acres.

In accordance with section 40 of the Act the court appointed Mr. Tay Hooi Soo, J.P. and

A Mr. I. W. Hake as assessors. A copy of the the provisions of the First Schedule of the Act was supplied to each of the assessors prior to the hearing of the reference.

B Mr. Abdoolcader appeared for the owners and Enche Wan Suleiman bin Pawan Teh, Senior Federal Counsel, for the deputy collector at the hearing of this reference on the 3rd, 4th and 5th August, 1964.

C Kepala Batas is a village on the trunk road some 10 miles north of Butterworth. The principal road in the village consists of two sections, the first, known as Jalan Butterworth, branches off from the trunk road and the second, known as Jalan Perak, re-joins the trunk road again about 350 yards further along. The impression is gained that originally these two sections constituted the main road and that the village, as often happens, grew up along both sides of that road. In any event the trunk road now skirts the centre of the village running along its western edge. This particular section of the trunk road is known as Jalan Kedah and, with Jalan Butterworth and Jalan Perak, still encloses the village centre.

E The buildings in the original part of the village are mainly of brick and tile construction. Much of the subsequent development around this area and also on the outskirts of the village has consisted of wooden buildings with corrugated iron or atap roofing.

F The trunk road itself and the padi land to the west of it probably tend to inhibit development to the west so that any further growth of the village will probably be on the eastern side, that is to say, towards Bertam Estate. The land acquired is on the northern side of Jalan Bertam. This is a road which extends eastwards almost at right angles from the village centre at the junction of Jalan Butterworth and Jalan Perak. The road is metalled for a short distance but subsequently merges outside the village limit into a laterite road.

H The land acquired is about 1,100 yards from the centre of the village and about half a mile to the east of the gazetted village limit. The land fronts Jalan Bertam, is of regular shape, fairly flat and level with the road. It has a frontage of about 220 yards and a depth of about 110 yards. Its area has been taken to be 5 acres. At the material date it was vacant, except for some dense undergrowth, and was available for replanting.

I Immediately to the east of the land acquired is the site of the house occupied by the manager of Bertam Estate.

In addition to the deputy collector of land revenue who made the award of \$10,000 appealed

against, three witnesses gave evidence as to their considered opinion of the value of the land at the material date.

The owners called an accountant, Mr. A. K. Jones, a partner in the firm of Valentine, Dunne & Company, consulting engineers, etc., and a chartered architect, Mr. G. M. Davidson, both of whom were also stated to be licensed appraisers and claimed to have had experience of land valuation. Mr. R. G. Fraser, a chartered valuation surveyor of 29 years' experience now holding the appointment of chief valuer, Malaysia, gave evidence for the acquiring authority.

Their valuations were, respectively, \$76,000, \$131,000 and \$10,000, each seeking to justify his figure by the evidence of actual transactions before the material date, and supported, in the case of Messrs. Jones and Davidson, by further transactions after that date which they said confirmed their views as to the likely trend of development in the immediate locality. Both these valuers envisaged a demand for the land acquired for building purposes.

Expert witnesses frequently differ widely in their considered views as to property values, but such a very wide divergence in expert opinion as here is somewhat unusual. It is remarkable that the two witnesses who both appeared for the owners gave such conflicting opinions. What the owners were saying was we think that in the first place they considered the value to be that stated by Mr. Davidson, and they called him to show the reasons, but that at the hearing of the reference they were only seeking to justify their original claim to the amount of the value put on the land by Mr. Jones.

However, confronted by such an extraordinary divergence of expert opinion based upon the same facts, and reconciliation of the valuations being quite impossible, it has been necessary to weigh carefully the value of all the evidence upon which each is based.

The owners' view of the value of the land acquired seems to have come about in this manner. In 1961 the State Government acquired 21.469 acres of land (Lot 759) on the other (south) side of the laterite road and almost immediately opposite the land acquired. A fire station and a school were built on this land although the fire station was said to be still not in use at the date of hearing because of a shortage of water.

Later, at the end of 1962, the Government acquired a part of the laterite road, Jalan Bertam, up to the fire station frontage with the intention of providing the fire station with a suitable access and presumably the road with a suitable surface.

A At about the same time or possibly earlier it seems to have been decided to construct a road running north and south about a quarter of a mile west of the land acquired to enable traffic between Bukit Mertajam and Sungei Patani to by-pass the village of Kepala Batas. The southern stretch of this road already existed in the form of a laterite road which joins Jalan Bertam at right angles at a point roughly half way between the village centre and the land acquired. Work on surfacing this stretch of road to the south is now in progress. It was said that the northern extension is soon to be made.

C This sequence of events between about 1961 and 1963 doubtless drew the attention of local landowners to the increased values which might be created in their land by these new projects.

D The impression was gained from the whole of the evidence that until these events took place there had not been the slightest intention on anyone's part of developing any sites near the land acquired.

E The sales which had occurred before the material date upon which Messrs. Jones and Davidson largely relied were in respect of land within the village itself, that is to say, the sites in Jalan Bertam of the cinema and the three brick shophouses almost opposite.

F In a small and fairly compact village such as this, and especially when a rigid code of rent control tends to militate against movement of tenants and redevelopment of older property, development almost invariably takes place initially on any central vacant sites available and on the fringe of the existing built-up area. For almost all purposes private developers, if unable to build within the built-up area, aspire to build as close to it as possible.

G Evidence of increasing interest in land is first noticed within the built-up area and on its fringe. At this early stage a comparatively short distance, and certainly one of more than half a mile, is quite sufficient to render other land of little or no interest to private developers.

H Emphasis was laid during the hearing on the effect of the line denoting the village limits. The boundary itself is probably of much less importance than the physical layout of existing property and it is the land within and immediately adjoining existing development which appreciates in value as demand rises.

I Even if consideration is given to transactions within that area which occurred during a period of two years or so immediately before the material date there is little sign of the appreciation of land values which both valuers for the owners contended had occurred. The site of

6,000 square feet for the three new shophouses in Jalan Bertam was sold in August, 1961, at a price of \$2 per square foot. The cinema site almost immediately opposite was sold nearly 18 months later in January, 1963. If during that period values were appreciating to any extent one would expect to find a noticeable difference in the price paid for the cinema site compared with that paid for the shophouses site. In fact the cinema site of 19,550 square feet was sold for \$1 per square foot, exactly half the price paid 18 months previously for land in precisely the same locality. Even if allowance is made for the fact that the cinema site was about three times the size of the site of the shophouses the inference is that land values at that time were quite static even within the built-up area.

Inside the village of Kepala Batas itself there are still areas of land either unused or inadequately exploited. The only recent private development of a permanent and significant nature within the village appears to have been the three shophouses and the cinema built in Jalan Bertam, very close to the village centre, and 7 shophouses and a private house built in Jalan Sekolah. None of the 7 shophouses seem to be occupied as yet or, if they are, they do not appear to be open for business.

This very small amount of private permanent development, even within the village, gives no indication of a substantial or increasing demand for building land. Outside the village there has been no private building of permanent structures, but a few wooden shops have been built in Jalan Bertam itself.

Between the last of these shops and the land acquired there is a gap of nearly half a mile consisting mainly of land either vacant or used for fruit growing with merely a few scattered older buildings.

There is, however, still no sign of potential purchasers of land on any substantial scale (other than the Government itself) whether at the old agricultural prices or at the newer and higher prices which the owners hoped to realise.

Mr. Arumugam Pillai bought about 7,000 acres of land lying to the north of Jalan Bertam from Bertam Estate in 1958 with the object of selling it off in smaller lots at a profit. Two sites only ("A" and "B" on Exhibit P.1) were the only sales of this land which had occurred outside the village before the material date (14th March, 1963).

Sites marked "A" and "B" (on Exhibit P.1) were sold in 1961 at 65 cents per square foot and 55 cents per square foot respectively. Each site is about 4,000 square feet and both were said to have been bought for housing purposes by persons living on other land in the area owned by the

A vendor, Mr. Arumugam Pillai. On site "A" a plank house with a zinc roof costing approximately \$4,000 to \$5,000 has been built. On site "B", although the sale took place in 1961 the purchaser has not yet completed a house which he is building on the site. The house, when completed, will probably cost not a great deal more than the price said to have been paid for its site.

The fact that Mr. Arumugam Pillai has, it seems, announced his intention of refusing to sell any land at less than \$1 per square foot is of no significance whatsoever unless it can also be shown that there is a reasonable expectation that people seeking land are prepared to pay that price. Of that there is no evidence at all outside the village.

The fact that one or two large landowners in an area may early sense the prospect of realising higher prices for their land because of the possibility of a demand for building purposes means little in itself. If, whilst awaiting the expected demand, they resolve to deny the supply of land to any potential purchaser the decision has little effect on values. It is not until such time as the desire for land is converted into an effective demand that substantially higher levels of values are brought about and become clearly reflected in an upsurge of prices realised in normal property transactions.

What has to be ascertained is the "market value" as at the 14th March, 1963, that is to say the price that would be paid by a willing purchaser to a willing vendor of the land with its potentiality.

The conclusion is inescapable that it is solely the public development by way of the fire station, the school and the new north-south by-pass road which has suddenly stimulated interest and that previously there has not been the slightest evidence of demand by private developers for land so far out of the village.

It is most unlikely that any latent demand for building land will have caught up with the land acquired for some time to come. During the hearing there was frequent reference to potential building value, but it is actual demand which creates value and of this there is no evidence in the immediate locality of the land acquired.

It may well be, as Mr. Carter said, that at the material date the owners did not wish to sell any more land. There was obviously no object in doing so at that time and much to be said against further sales if prices were then beginning to edge forward in expectation of awakening private interest in the locality.

The valuation of Mr. Davidson appeared to be based mainly on four transactions in the past

and on unbounded optimism in the future. The transactions were the sale of the sites for the cinema (\$1 per square foot), the shophouses (\$2 per square foot), site "A" on Exhibit P.1 (65 cents per square foot) and site "B" (55 cents per square foot).

It is most significant that although no private transactions of any magnitude had taken place in the vicinity of the land acquired before the acquisition, very soon afterwards Mr. Gooi Bak Seang agreed to buy $4\frac{1}{4}$ acres at 40 cents per square foot and the Merdeka Bakery site of about 8,000 square feet was said to have been sold at 90 cents per square foot. Although Mr. Abdoolcader said subsequent transactions must not be entirely ruled out in any consideration of the value of the land acquired, Mr. Carter, the estate manager, had already admitted in evidence that the sale to Mr. Gooi Bak Seang was made in order to show that the amount of the award was insufficient.

Transactions of such a nature occurring after the material date and when the Government's intentions are already public knowledge carry very little weight.

It is considered that prices paid for small sites within the village such as those of the cinema and the shophouses provide no evidence whatsoever as to the value of the land acquired. The circumstances attaching to the sales of sites "A" and "B" (Exhibit P.1) and, in particular, the fact that no house has yet been completed on site "B" renders both these transactions of little if any assistance. Bereft, too, of the subsequent transactions, Mr. Davidson's valuation is left, in the result, with nothing but its unbounded optimism to support it and must therefore be dismissed as wholly unrealistic.

Whilst Mr. Jones's valuation placed a somewhat lesser strain upon credulity it suffered from similar defects in principle in that it was entirely based upon the same ingredients, that is the four transactions which have failed to afford the required support for Mr. Davidson's figures, and excessive optimism. That valuation therefore must also be rejected.

Having either discarded entirely or so substantially discounted much of the evidence given on behalf of the owners there remains little other evidence for consideration.

The erection of the fire station and school and the acquisition of the road giving access to the fire station and the proposal to construct the by-pass road were all matters, before the material date, which had aroused interest and had drawn attention to the possibility of land in the immediate locality acquiring some value additional to that of its earlier normal use for agricultural purposes. At the material date it seems to have

A been no more than a gradual awakening to the latent possibilities of land likely to be affected by these changes brought about by Government initiative.

B Having dismissed the valuations of Mr. Davidson and Mr. Jones the only remaining question is whether the amount awarded made adequate allowance for this new factor.

C Mr. Fraser said in evidence that Mr. J. R. Brampton, a valuer in his department who had since left the service, had valued the land acquired at \$2,000 per acre, on the assumption that the land was agricultural and would remain agricultural until a demand came about to develop it as small holdings. The value of \$2,000 per acre thus arrived at was greater than it would have been had the land been valued as cleared and suitable only for rubber.

D The earlier transactions at \$1,200 per acre (Lot 759 in 1961) and \$1,400 per acre (1962) which Mr. Fraser referred to seem to have been prices paid for land regarded at the time as being suitable only for agricultural purposes and having no development value, actual or potential.

E In Mr. Fraser's written report it was said that he was of the opinion that at the material date a prudent purchaser would have paid a little more for the land than its value for rubber growing purposes in the hope that it might later be used for building development but that such a purchaser would not pay much more.

F In his evidence Mr. Fraser said that although he was sure there was no immediate demand for this land for building purposes there might possibly be some remote development value in it and he felt that his valuation of \$2,000 per acre made full allowance for that contingency. He considered that for uncultivated land primarily suitable for agricultural purposes and with only such a remote potential building value \$2,000 per acre was a very adequate price in the light of the prices of \$1,200 per acre and \$1,400 per acre paid earlier.

G H Mr. Lim Bor Yee, the deputy collector of land revenue, Butterworth, gave evidence to the effect that, unlike Mr. Fraser, in making his award he had assumed that the land possessed no potential building value whatever and that he had arrived at his figure of \$2,000 per acre upon the assumption that the land was suitable only for agricultural purposes.

I Less than two months before the material date Lot 48 was sold twice in little more than three weeks — the second time at a price of \$1,140 per acre compared with the price of \$713 per acre obtained previously.

There might well have been some significance in these transactions. Mr. Fraser said

that it was kampong land with poor access and much inferior to the land acquired.

So far as it is possible to weigh up all the relevant factors at this later stage it is considered that the approach to the matter by the Government valuers was far more realistic and more substantially correct, in so far as they regarded the land as primarily agricultural land and likely to remain so for some time to come. Nevertheless it seems that Mr. Fraser, if not the deputy collector of land revenue, did appreciate the latent potential of the land for building purposes at some indefinite later time. Once this likelihood is recognised by local people there is no doubt that prices asked and paid for land do tend to appreciate even if in some instances the change appears to an objective observer to be somewhat premature.

Valuation can never be a strictly mathematical process and, in particular, remote potential development value is often not easy to quantify in the absence of an abundance of evidence culled from recent transactions in respect of comparable property. Rarely is the available evidence overwhelmingly convincing and ultimately it becomes a matter of opinion based upon experience.

Almost invariably there emerges from a consideration of all the facts a fairly well-defined range although sometimes somewhat blurred at either end within which the answer clearly must lie and the opinions of those of equal competence and experience may well tend to indicate different points within that range. This is such an instance. The range of possible values is not particularly extensive but it is necessary to bear in mind that there is usually a very substantial gap between the value of land suitable for even the most profitable agricultural purpose and its value for any type of building development. Viewing the figure of \$2,000 per acre against this background and having particular regard to the deputy collector of land revenue's categorical statement that he had made no allowance whatsoever for any potential building value it is considered that the figure of \$2,000 per acre lies unduly low on the range of possible values. It is an absolute minimum figure rather than a fair and full reflection of the price which it might reasonably be expected the land would have realised had it been sold on the material date.

In the light of all the evidence given and a careful inspection of the land and the surrounding locality and the opinions of Mr. Hake and Mr. Tay in my opinion a fair figure would be \$3,500 per acre.

None of the matters referred to in subparagraphs (b), (c), (d) or (e) of paragraph 2 of the First Schedule to the Land Acquisition Act, 1960, appear to have any relevance to the

A amount of compensation which should be paid in this case.

On the above grounds, in accordance with the provisions of section 47 of the Act:—

(a) the amount awarded on account of the market value of the land is \$17,500;

(b) nothing is deducted for any increase in the value of the other land of the owners likely to accrue from the use to which the land acquired will be put;

(c) no amounts are awarded under paragraphs (c), (d) and (e) of section 2 of the First Schedule.

The amount of the court award exceeds the sum awarded by the deputy collector, but the claim of the owners was so excessive that I order the owners to pay their own costs and half the costs of the deputy collector.

I. W. Hake and Tay Hooi Soo, Assessors, concurred.

Order accordingly.

Solicitors: *Presgrave & Matthews.*

ISMAIL BIN CHAT v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) November 9, 1964]

[K.L. — Federal Court Criminal Appeal No. 58 of 1964]

Penal Code, s. 302 — Murder — Failure to put defence to the jury — Court satisfied that even if defence had been put to jury they would have found appellant guilty — Courts of Judicature Act, 1964, s. 60.

Criminal Procedure — Summing-up — Failure to put defence to jury.

In this case the appellant was convicted of murder. The evidence showed that the appellant had shot the deceased persons. At the trial and in his summing up the learned trial judge put to the jury the various defences that were raised, the defence of accident, the defence of provocation, the defence of private defence and the defence of sudden quarrel. He did not however put to the jury the defence that what might be involved was an offence of causing death by doing a rash or negligent act.

Held: as the jury had rejected any question of accident, of provocation or sudden quarrel or of private defence, the omission to put the question of negligence to the jury could have had no effect whatsoever on their decision because it was based on a set of facts which they had clearly rejected; and therefore the case fell within the scope of the proviso to section 60 of the Courts of Judicature Act.

I Case referred to:—

(1) *R. v. Oster-Ritter* 32 Cr.App.R. 191 at page 198.

FEDERAL COURT.

Dato R. P. S. Rajasooria for appellant.

Gunn Chit Thuan (Deputy Public Prosecutor) for the respondent.